
**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Comprehensive Review of Universal Service)	WC Docket No. 05-195
Fund Management, Administration, and)	
Oversight)	
)	
Federal State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	
)	
Rural Health Care Support Mechanism)	WC Docket No. 02-60
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Changes to the Board of Directors for the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

To: The Commission

**COMMENTS OF DOBSON CELLULAR SYSTEMS, INC. AND AMERICAN
CELLULAR CORPORATION**

Ronald L. Ripley
Senior Vice President and
General Counsel
Dobson Cellular Systems, Inc.
14201 Wireless Way
Oklahoma City, OK 73134
(405) 529-8376

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SUMMARY

Dobson commends the Commission for commencing this proceeding to improve the management, administration, and oversight of its universal service programs. Given Dobson's experience as both a contributor and a recipient of universal service funding, Dobson has first-hand experience with the merits as well as the shortcomings of the existing system. There are certain reforms that could bring significant improvement.

The administrative structure of the universal service programs could be both more efficient and more competitively neutral. The Universal Service Administrative Company ("USAC") Board is no longer representative of the telecommunications industry, now that the wireless industry is essentially equal to the wireline industry in both lines served and revenues generated. Administrative procedures, too, could be more efficient. USAC's statements should be clearer, and its policies and procedures *all* should be available at all times to the entities that are expected to comply with them. USAC's and the Commission's process for determining the quarterly contribution factor should be expedited so that the factor is available at least 30 days prior to the beginning of each quarter, and this amount of advance notice should be provided for the required contribution amount even if the contribution methodology changes. Further, the administration of high cost support could be much more efficient if the current array of 5 high cost support programs were consolidated into a single program, and determined based on an objective measure of cost (such as the forward-looking cost of the most efficient technology).

Dobson shares the Commission's concern that high cost support should be cost-effective, and supports competitively neutral performance measures for the high cost program. Such performance measures should include: (1) the extent to which the program provides support based on an objective measure of cost; (2) the extent to which rural consumers are benefiting from competitive entry in high cost areas; and (3) an appropriate accounting of support received from other sources.

Dobson also supports greater oversight and accountability for USF recipients. All carriers receiving support should be subject to audits, and the audit process should be transparent and subject to clear rules and procedures. All carriers, and not just the largest recipients, must be subject to audits, but the auditing program should be designed to eliminate unnecessary burdens on audited carriers. It should include for-cause and random audits. More stringent penalties should be adopted for intentional violations of the high cost program, and the procedures and policies for suspension and disbarment should be made clear, as they have been in the E-Rate program.

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**COMMENTS OF DOBSON CELLULAR SYSTEMS, INC.
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Dobson Cellular Systems, Inc. and American Cellular Corporation (collectively, “Dobson”) present the following comments in response to the Commission’s Notice of Proposed Rulemaking in the above-captioned proceeding.¹ Dobson, through its various subsidiaries and

¹ *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight; Federal State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Rural Health Care Support Mechanism; Lifeline and Link-Up; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, WC Docket No. 05-195, CC Docket No. 96-45, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 03-109, and CC Docket No. 97-21, *Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking*, FCC 05-124 (rel. June 14, 2005) (“NPRM”).

affiliates,² is licensed to provide wireless telecommunications service in portions of 16 states stretching from Alaska to New York. Dobson began as a small wireless carrier in rural Oklahoma, and today provides service to approximately 1.6 million subscribers in predominantly rural and suburban areas. Dobson set itself apart as one of the earliest rural wireless carriers to roll out digital service throughout its entire service area, and to offer local, regional, and rural wireless consumers nationwide rate plans substantially similar to large nationwide wireless service providers. Most recently, Dobson has completed its roll-out of an overlay of both GSM/GPRS and EDGE technology on its existing TDMA networks, which will bring rural consumers the benefits of additional advanced data and information services.

Dobson has endeavored to provide superior service in more costly to serve areas primarily as a publicly traded company that competes in the public capital markets for investment financing. Dobson's shareholders and investors receive no guarantee that they will earn a return on their investment or, if they do, of how much. Recently, Dobson has begun receiving high cost universal service funding in a few states, and has petitions pending in some additional states before the FCC and state commissions. Universal service funding has helped, and will continue to help, support expanded service and increased capacity in the most costly to serve portions of Dobson's licensed areas. Dobson also is a significant contributor to the USF.

Much of Dobson's coverage area overlaps with the study areas of rural local exchange carriers ("LECs") that receive the bulk of the high cost portion of the federal universal service fund ("USF"). Dobson competes actively with these carriers, and has had significant success in

² Dobson Cellular Systems, Inc. and American Cellular Corporation ("ACC") are wholly-owned subsidiaries of Dobson Communications Corporation. Both Dobson and ACC hold Cellular Radiotelephone Service ("cellular") and Personal Communications Service ("PCS") licenses.

recent years by providing consumers with a superior value and the advantages of mobility. Dobson initially captured primarily second lines and long-distance minutes, but lately has captured more primary lines and (through its GPRS and EDGE upgrades) broadband traffic.

Dobson has been an active participant in the Joint Board's and the Commission's various proceedings related to universal service issues. Given Dobson's long commitment to providing high-quality wireless services in rural America and its experience with the universal service program – as both a contributor to the fund and a recipient of funding – Dobson believes it brings a valuable perspective to this proceeding. Dobson commends the Commission for commencing this proceeding to improve the efficiency and effectiveness of the universal service program. As discussed herein, Dobson supports competitively neutral reforms to increase accountability and ensure the efficient allocation of funding.

I. THE USF SHOULD BE ADMINISTERED IN A MORE EFFICIENT AND COMPETITIVELY NEUTRAL WAY

In reviewing “measures the Commission can take to improve management and administration of the [universal service] program,”³ the Commission should look both at measures to improve the program's efficiency, as well as changes to ensure the program's competitive neutrality.⁴

³ *NPRM* at ¶ 9.

⁴ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, 12 FCC Rcd 8776, 8801 (1997) (subsequent history omitted) (“*First Universal Service Order*”) (adopting competitive neutrality as a universal service principle).

**A. USAC’S BOARD SHOULD BE MORE COMPETITIVELY
NEUTRAL AND REPRESENTATIVE OF TODAY’S
TELECOMMUNICATIONS INDUSTRY**

As the *NPRM* observes, the composition of USAC’s Board of Directors is specified by Commission rule.⁵ Currently, USAC’s Board consists of 19 seats, of which 3 represent incumbent LECs, 1 represents competitive LECs, and 2 represent interexchange carriers (“IXCs”). The CMRS industry is represented by only 1 director. Thus, presently the LEC industry has 4 representatives on the Board, and the landline industry as a whole has 6 (almost a third of the Board seats), while the wireless industry has only a single seat. While this composition may have made sense almost a decade ago when the USAC Board was formed, it is hopelessly out of step with today’s telecommunications industry.

In the years since the passage of the Telecommunications Act of 1996 (“1996 Act”), the wireless industry has outstripped the landline industry in terms of both customers served and revenues generated, and as a result bears an ever-increasing burden for supporting universal service programs. Rapidly falling wireless prices, improving service quality, and the benefits of mobility have caused consumers to “vote with their feet,” and the results have been a landslide. There were almost 195 million wireless subscribers in at mid-year 2005,⁶ compared with only 118 million fixed residential lines⁷ and 183 million fixed lines total.⁸ At the same time, wireless

⁵ *NPRM* at ¶ 14; *see also* 47 C.F.R. § 54.703(b).

⁶ CTIA – The Wireless Association, Annualized Wireless Industry Survey Results – June 1985-June 2005, *available at* http://files.ctia.org/img/survey/2005_midyear/slides/MidYear_1.jpg (“CTIA Results”) (2005 estimate).

⁷ *Trends in Telephone Service*, at 7-6, Table 7.4 (IATD WCB rel. June 2005) (“*Telephone Trends*”) (2003 data most recent available, but given downward trend, use of older data is likely favorable to wireline).

industry revenues have grown to over \$108 billion,⁹ compared with just over \$109 billion for LECs.¹⁰ Not surprisingly, as a consequence, wireless contributions to support universal service have grown exponentially, to the point that wireless carriers contributed almost 27 percent (around \$2 billion) of total universal service funding in 2004.¹¹ To the great benefit of consumers, wireless carriers also have begun to receive support to assist with the provision of support in rural and high cost areas, and for low-income consumers, but still received only 7 percent (\$395 million) of all USF support in 2004.¹²

As a result of this sea change in industry structure, there is no longer any justification for providing only a single wireless representative on the USAC Board. Given the changes in industry structure laid out above, the USAC Board should be restructured so that the wireless and wireline industries have roughly equal representation.

This could be accomplished without increasing the size of the USAC Board. For example, incumbent LEC representation could be reduced to 2, competitive LEC representation maintained at 1, and IXC representation eliminated (in light of the impending demise, through mergers, of the major freestanding IXCs). Wireless representation, meanwhile, could be increased to 4. This would more fairly represent today's telecommunications marketplace while maintaining carrier representation on USAC's Board at its present level of 7 seats.

⁸ *Id.* at 7-3, Table 7.1 (2003 data most recent available).

⁹ CTIA Results, *supra*.

¹⁰ *Telephone Trends* at 15-6, Table 15.4.

¹¹ Comments of CTIA – The Wireless Association, CC Docket No. 01-92, at 34 (filed May 23, 2005).

¹² *Id.*

Alternatively, a fair USAC Board composition could be accomplished by increasing the size of the Board to add 5 additional wireless seats, for a total of 6. This would equalize wireless and wireline representation on the board at 6 seats each, and would increase the size of the board from 19 seats to 24.

B. UNIVERSAL SERVICE SHOULD BE ADMINISTERED MORE EFFICIENTLY

In Dobson's experience, USAC makes a sincere effort to administer the universal service programs in an efficient and professional manner, but has not always succeeded in every respect. Several relatively minor and common-sense reforms could make a significant improvement in the funds' administration.

1. USAC's Statements Should Be Clearer

The Commission should ensure that the clarity of USAC's billing and disbursement statements is improved. USAC's current statements generally include little or no information regarding the derivation of dollar figures they contain, including regarding adjustments that may have been made.

For example, the high cost disbursement statements that Dobson currently receives contain a single disbursement dollar figure for an entire state. They do not reconcile the dollar figure to Dobson's line count submissions, nor do they allocate the dollar figure to individual study areas. Dobson often finds discrepancies between the amounts actually disbursed and the amounts it had expected to receive based on its line count filings. Such discrepancies can only be explained, however, through calls (generally more than one) to USAC's help desk.

USAC and carriers both would benefit from a disbursement statement that notes the carrier's line count submission, the available per-line amount, and provides a reconciliation for any discrepancy between the amount that would be expected based on the line count submission

and the amount actually disbursed. This should be provided on as granular a geographic basis as feasible (at minimum, the study area level).

Similarly, Dobson's contributor billing statements almost always include adjustment amounts with no explanation. Calls to USAC reveal that the adjustments are meant to reflect offsets from prior periods, but Dobson has never succeeded (after repeated calls and e-mails) in obtaining from USAC any explanation for how the adjustments were derived. Thus, the Commission also should ensure that USAC's billing statements include a detailed explanation for the derivation of each line item on the statement.

2. All of USAC's Procedures Should Be Publicly Available and Subject to Expedited Commission Clarification When Necessary

Similarly, the Commission should require USAC to make all of its operating procedures and policies available in some public way, such as by filing a procedural manual for contributors and recipients as an *ex parte*. The manual should be updated through a revised *ex parte* whenever procedures change. The manual also should be made available on USAC's website. Under the present system, carriers often learn of internal processing procedures only after they inadvertently fail to comply with them, causing unnecessary delays and work effort to troubleshoot resulting problems.

As an independent administrator, USAC rightly lacks authority to establish substantive policy for contribution or disbursement of universal service funding, but is empowered to establish procedural rules.¹³ In practice, the line between substantive policy and procedural rules has proven to be blurry in many instances. The Commission should therefore set forth a presumption that any issue involving a policy component or affecting substantive carrier rights

¹³ 47 C.F.R. § 54.702.

(as contributor or beneficiary) is a policy issue that must be resolved by the Commission. At the same time, the Commission should establish an expedited procedure to permit USAC, affected carriers, or both to bring questions to the Commission and be assured of a resolution in a reasonable period of time. Dobson proposes a maximum period of 60 days for Commission action in such cases, which should be codified in the Commission's rules.

3. The Contribution Factor Should Be Released More Timely

The *NPRM* notes that it is the Commission's practice to make the contribution factor available 14 days before the beginning of each quarter, based on USAC data submissions required at least 30 days before the beginning of each quarter.¹⁴ In Dobson's experience, 14 days is not a sufficient time period for carriers to take necessary steps to advise their customers of changes to the contribution factor. Unlike LECs that may tariff their rates, wireless carriers are forbidden from filing tariffs.¹⁵ As a result, wireless carriers must generally give customers notice of the rate change in advance of (or at minimum concurrently with) the effective date of the revised contribution factor. Like most wireless carriers, Dobson bills its customers in advance for monthly minimum airtime charges, and in arrears for roaming, overages, and other specific charges. Under the current procedure, Dobson has no opportunity to give customers advance notice of the change in rate (such as in the billing statement for the month before the change is effective), and must change the language on its billing statements in less than 14 days' time.

A better procedure would be to require USAC to provide the necessary supporting data at least 45 days prior to the beginning of each quarter and to commit to release the revised

¹⁴ *NPRM* at ¶¶ 17-18.

¹⁵ 47 C.F.R. § 20.15(c).

contribution factor at least 30 days prior to the beginning of the quarter. Because Dobson bills its customers on a rolling basis, this will allow Dobson to give many customer 30 days notice before they receive the first bill reflecting the revised contribution factor.

Finally, Dobson notes that these same concerns will apply even if the Commission concludes that universal service contributions should be assessed on a basis other than revenues, such as telephone numbers or connections. However contributions are assessed, carriers will need sufficient advance notice of changes in the contribution amount to ensure that their pass-through charges are accurate. The Commission should provide carriers with such notice not less than 30 days before the beginning of the quarter.

4. The Five High Cost Programs Should Be Consolidated and Streamlined Based on an Objective Measure of Cost

Currently, the Commission provides high cost support to carriers through a convoluted array of 5 separate programs.¹⁶ Some of these programs are based on the incumbent LEC's embedded costs, without strong oversight of whether such costs were prudently incurred.¹⁷ High cost support could be administered much more efficiently if the 5 existing programs were consolidated into a single program, and all support was provided based on an objective measure of cost, such as the forward-looking cost of the most efficient technology to serve a given area.

As Dobson has argued in the Commission's concurrent proceeding on high cost reform, the historical justification for the complexity inherent in having 5 discrete high cost support

¹⁶ See *NPRM* at ¶ 45.

¹⁷ See, e.g., Comments of the Public Utilities Commission of Oregon, CC Docket No. 96-45, at 8 (filed Sept. 30, 2005) ("In Oregon and many other states, small incumbent rural ETCs' consumer rates are not regulated.").

programs does not overcome the current structure's inefficiency and unnecessary complexity.¹⁸ The current programs all seek to serve the same fundamental goals. They attempt to identify areas where the cost of service is sufficiently high that support is necessary, and to determine the appropriate level of support for networks in those areas. The Commission therefore should consolidate high cost support into a single program that efficiently and effectively achieves these goals.

In crafting a single, efficient high cost support program, the Commission should maximize the program's efficiency by identifying high cost areas based on the forward-looking cost of the most efficient technology. As Dobson has explained at length in the Commission's proceeding on high cost reform, a forward-looking model eliminates incumbent LECs' incentives to spend money inefficiently and ends the debate raised by providing support to CETCs based on incumbents' costs.¹⁹ Similarly, providing funding based on a forward-looking model will eliminate administrative costs incurred by carriers and USAC to track, report, and audit embedded costs that are currently used to calculate funding amounts. Dobson has acknowledged that the development of a unified forward-looking cost model may take time, and the Commission may adopt, as a short-term interim step, separate wireless and wireline models for rural areas.²⁰ But the efficient administration of the programs requires that the Commission move without further delay to a unified mechanism based on forward-looking costs.

¹⁸ Comments of Dobson Cellular Systems, Inc., CC Docket No. 96-45, at 2-8 (filed Sept. 30, 2005) ("Dobson Joint Board Proposals Comments").

¹⁹ *Id.*

²⁰ *Id.*

II. THE COMMISSION SHOULD ADOPT COMPETITIVELY NEUTRAL PERFORMANCE MEASURES FOR THE HIGH COST PROGRAM

As the *NPRM* correctly notes, “effective program management requires the implementation of meaningful performance measures.”²¹ In the context of this proceeding, as well as in furtherance of the Commission’s obligation to compile performance measures in order to comply with the Office of Management and Budget (“OMB”) Program Assessment Rating Tool (“PART”) requirements,²² the Commission should assess the high cost support program based on the following performance measures:

Extent to which the program provides support based on an objective measure of cost:

As described in the previous section and in Dobson’s prior comments in the rural high cost support proceeding, the efficient administration of high cost support necessitates that support be provided based on an objective measure of cost, such as the forward-looking cost of the most efficient technology for providing service in a given area. Dobson recognizes that the process for developing such a mechanism will take time. Accordingly, Dobson recommends that the Commission adopt a performance metric for the high cost program that measures the Commission’s and carriers’ progress towards this goal.

Extent of competitive entry in high cost areas: The current imperative for universal service stems from Sections 254 and 214(e) of the Communications Act, which were added by the 1996 Act. The 1996 Act, as the Commission well knows, was a fundamentally “pro-

²¹ *NPRM* at ¶ 24.

²² *Id.*

competitive” piece of legislation,²³ and the Commission itself has expressed its faith in competitive markets as the best method of structuring and regulating the industry.²⁴ Consistent with the pro-competitive character of the 1996 Act, Section 214(e) explicitly provides for the designation of competitive ETCs, requiring that competitive ETCs “shall” be designated in the territories served by “non-rural” (*i.e.*, large) incumbent LECs and “may” be designated in the territories served by “rural” (*i.e.*, small) incumbent LECs.²⁵ Given this clear mandate for the designation of competitive ETCs, and the Act’s clear preference for competitive markets, the Commission should assess the system’s progress in ensuring and facilitating the designation of qualified competitive ETCs. Just as the Commission regularly measures the extent of

²³ The 1996 Act “provide[s] for a *procompetitive, de-regulatory national policy framework* designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by *opening all telecommunications markets to competition.*” H.R. Conf. Rep. No. 104-458, 104th Cong., 2d Sess. 113 (1996) (emphasis added).

²⁴ See, e.g., *International Settlements Policy Reform; International Settlement Rates*, IB Docket No. 96-261, *First Report and Order*, 19 FCC Rcd 5709, 5729 (2004) (“[W]e believe that competitive markets can generally constrain harmful behavior better than regulation”). See also *Verizon Wireless’s Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation; Telephone Number Portability*, WT Docket No. 01-184 and CC Docket No. 95-116, *Memorandum Opinion and Order*, 17 FCC Rcd 14972, 14998 (Separate Statement of Comr. Kevin J. Martin, Approving in Part and Dissenting in Part) (“I believe that competition is preferable to regulation. Market forces are the best method of delivering choice, innovation and affordability to consumers across the nation.”)

²⁵ 47 U.S.C. § 214(e). Although rural incumbent LECs often attempt to make much of the distinction between the directive language for designating competitive ETCs in non-rural areas and the permissive language for such designations in rural areas, the important point is that the Act specifically contemplates the designation of competitive ETCs in all areas of the country.

competition in the CMRS marketplace,²⁶ the Commission should measure the number of ETCs to which consumers in rural and high cost areas have access throughout the country.

Measuring the extent of competitive ETC designation will also facilitate the identification of areas where competitive entry has been slow. Particularly where prospective entrants have sought ETC designation and been denied, this type of assessment will facilitate measures to bring incumbents in such areas to a less vulnerable position so that the public interest in competitive entry is not outweighed by other factors.²⁷ Given the rapid pace of change in the telecommunications marketplace, and the clear pro-competitive mandate of the statute, regulators simply cannot shelter any incumbent carrier indefinitely from competition through a monopoly on federal support for serving high cost customers. More importantly, attempts at such protection will become increasingly futile as technology continues to change.

Accordingly, Dobson recommends that the Commission set a goal that consumers in rural and high cost areas should have access to service from no fewer than 3 total ETCs. Areas where this level of competitive ETC entry has not been achieved should be identified and steps should be taken to achieve the target within a reasonable period of time.

Appropriately accounting for support from other sources: As the *NPRM* correctly notes, participants in the high cost support program often also receive support from other

²⁶ See *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WT Docket No. 05-71, *Tenth Report*, FCC 05-173 (rel. Sept. 30, 2005).

²⁷ For example, Appendix HC03 to USAC's fourth quarter 2005 administrative filing with the FCC shows that no rural telephone company study areas in Idaho are benefiting from competitive ETC entry. Appendix HC01 shows that incumbent carriers expect to receive over \$14 million in support for the quarter, while the single competitive ETC in the state (which is eligible only in non-rural areas) will receive nothing. This should be viewed as a failure in the operation of the program.

government programs, such as the Department of Agriculture’s Rural Utilities Service.²⁸ As Dobson has argued in the Commission’s rural high cost reform proceeding, Dobson strongly supports accounting for support from these other sources in computing the appropriate amount of support for a particular carrier.²⁹ An efficient federal program should not provide more support than is necessary to achieve the program’s goals. Dobson is concerned that the confluence of these separate programs may result in some recipients receiving more support than is necessary to achieve the programs’ goals. Accordingly, Dobson encourages the Commission to craft a performance metric for the high cost program that accounts for this issue.

III. DOBSON SUPPORTS GREATER OVERSIGHT AND ACCOUNTABILITY FOR USF RECIPIENTS

A. DOBSON SUPPORTS APPROPRIATE AUDITS OF USF BENEFICIARIES

In the *NPRM*, the Commission requests comment “on adopting a targeted audit requirement to ensure program integrity and to detect waste, fraud, and abuse” for the high cost program.³⁰ Dobson supports competitively neutral audits that will ensure that universal service is being used for its intended purposes.³¹ To ensure competitive neutrality, the Commission-imposed auditing process must be transparent and consistent with clear rules as to the

²⁸ *NPRM* at ¶ 30.

²⁹ See Comments of Dobson Cellular Systems, Inc., CC Docket No. 96-45, at 9 (filed Oct. 15, 2004).

³⁰ *NPRM* at ¶ 68. The Commission also is seeking comment on implementing auditing requirements for the low income and rural health care programs, and strengthening the existing auditing requirement for the schools and libraries program. See *id.*

³¹ See 47 U.S.C. § 254(e). (“A carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”).

documentation required to demonstrate compliance, the auditing procedures (including deadlines), what constitutes a violation and the appropriate penalties for such violations.

Currently, Section 54.705 of the Commission's rules permits USAC's High Cost and Low Income Committee to conduct audits of beneficiaries of the high cost program.³² Only one other section of the Commission's universal service rules provides any direction as to how these audits can be conducted by USAC. Section 54.702(n) states that "[w]hen the Administrator, or any independent auditor hired by the Administrator, conducts audits of the beneficiaries of the Universal Service Fund, contributors of the Universal Service Fund, or any other providers of services under the universal service support mechanisms, such audits shall be conducted in accordance with generally accepted government auditing standards."³³ USAC's website has a page entitled "Understanding High Cost Beneficiary Audits," which discusses how it conducts audits and what carriers can do once USAC issues a report regarding the carrier's audit.³⁴ Although USAC provides limited information as to the documentation it looks at regarding audits, none of the requirements regarding appropriate documentation or procedures used by USAC for carrier audits are specific or formal. Moreover, no aspects of this process ever has been codified by the FCC.

As in the schools and libraries context, the Commission should implement a process to ensure that audits are being conducted in a transparent and consistent manner. In the *Schools and Libraries Fifth Report and Order*, the Commission concluded "that a standardized, uniform

³² 47 C.F.R. § 54.705(c)(1)(iv).

³³ *Id.* at. § 54.702(n).

³⁴ USAC, *Understanding High Cost Beneficiary Audits*, available at <http://www.universalservice.org/hc/telecomcarriers/audits.asp>.

process for resolving audit findings [was] necessary” and therefore directed USAC to submit an audit resolution plan with 45 days of publication of the *Fifth Report and Order* in the Federal Register.³⁵ Once USAC submitted its “proposed procedures for resolving all findings arising from audits,” the Commission sought comment on USAC’s plan.³⁶ Additionally, in the *Schools and Libraries Fifth Report and Order*, the Commission noted that many of USAC’s audit reports issued after a carrier audit was completed found violations by those carriers of USAC procedures. As a result, the Commission required USAC to identify on an annual basis its administrative procedures that are not addressed by existing Commission rules or precedent that “should be codified ... to facilitate program oversight.”³⁷

To ensure that the auditing process conducted by USAC or any future Administrator is transparent, consistent and competitively neutral, the Commission should codify the procedures that the Administrator will follow, as well as the appropriate documentation the carrier must have to prove compliance under the universal service rules.³⁸ Although Dobson supports audits of beneficiaries of the high cost program, Dobson submits that any auditing procedure that is not

³⁵ *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, *Fifth Report and Order and Order*, 19 FCC Rcd 15808, 15833 (2004) (“*Schools and Libraries Fifth Report and Order*”).

³⁶ *Wireline Competition Bureau Seeks Comment on the Universal Service Administrative Company’s Audit Resolution Plan*, CC Docket No. 02-6, *Public Notice*, 20 FCC Rcd 1064 (2004). The Commission has taken no further action regarding this *Public Notice*, and therefore, does not appear to have finalized USAC’s auditing plan.

³⁷ *Schools and Libraries Fifth Report and Order*, 19 FCC Rcd at 15834.

³⁸ Under no circumstances, however, should the Commission cede its authority to USAC to determine if a carrier is using universal service funding for its intended purposes. Under the terms of Section 254(e), only the Commission can determine if universal service funding is being used for such purposes.

transparent or competitively neutral will serve only to add increased administrative complexities to the program and could affect investment in rural facilities.

Under this same principle of competitive neutrality, the Commission must subject *all* carriers to audits. In the *NPRM*, the Commission asks whether universal service recipients that receive over a certain threshold of funding should be the only carriers audited.³⁹ Moreover, the Commission asks for comment on the costs and benefits of an auditing program, “particularly the potential paperwork and other costs imposed on rural carriers and small entities.”⁴⁰ The Commission states that “the cost of independent audits could outweigh the benefits in cases where USF recipients only receive a small amount of support.”⁴¹

As a regional wireless carrier serving rural areas, Dobson fully recognizes the costs that an independent audit could have on smaller carriers. Nevertheless, all carriers should be subjected to random (as well as for-cause) audits. Specifically, the Commission should not exclude small and rural carriers from audits. Carriers, particularly rural LECs that have been receiving universal service funding for a number of years and receive a large portion of the funding, must be required to account for how they spend their universal service funding.⁴² By setting a threshold for audits, the Commission would eliminate any deterrent effect at levels below the threshold. The Commission is required under the statute to ensure that all carriers use

³⁹ *NPRM* at ¶ 77. As an example, the Commission asked whether only entities that receive \$3 million or more in high cost funding should be audited.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Dobson suggests that the Commission should seek to audit those carriers receiving funding for the greatest number of years to ensure that the continued level of support remains necessary.

funding for its intended purposes. Imposing auditing requirements on only some carriers and not others would not fulfill this statutory purpose. Instead, the Commission should ensure that the group of carriers selected for audits each year includes a sampling of all size ranges. This will ensure compliance at all levels, and also can provide important data regarding best practices and relative efficiency in the use of funding among carriers of different sizes.

The Commission should, however, take actions to ensure that audits are not overly burdensome for any carrier. For example, the Commission requests comment on who should pay for audits.⁴³ The Commission could, as it suggests, only require carriers to pay for audits if waste, fraud and abuse is discovered.

Wireless carriers are no more interested than wireline carriers in increased regulatory burdens. The Commission should not apply monopoly-era recordkeeping obligations on wireless carriers in the name of new auditing rules. For example, the Commission's accounting rules for historically rate-regulated carriers would be entirely inappropriate for carriers in a competitive market-place.⁴⁴

In addition, the Commission asks for comment on whether the 5-year period applied in the schools and libraries program should apply in the high cost context.⁴⁵ Specifically, in the schools and libraries program, program participants are required to keep records for 5 years, and the Commission has 5 years to initiate and complete inquiries regarding violations of the Commission's rules. Dobson does not support such a lengthy record retention program or

⁴³ *NPRM* at ¶ 77.

⁴⁴ *See* 47 C.F.R. Part 32.

⁴⁵ *NPRM* at ¶ 87.

investigation period in the context of competitive services such as wireless. The Commission and USAC do not need more than one year to review the quarterly and annual filings of carriers to flag any problems that might indicate a violation of Commission rules or precedent. Rather, Dobson's proposal is to have two types of audits with a two-year period for FCC action and retention of records. The first type of audit would be a random audit, to which all carriers would be subject. Such random audits would look back two years, in accordance with the two-year record retention requirement.⁴⁶ The second audit would be undertaken "for cause," because the Commission or USAC suspects inappropriate activity by the carrier based on the carriers quarterly or yearly filings. Such audits also would cover a maximum two-year period.

B. DOBSON SUPPORTS MORE STRINGENT PENALTIES FOR USF VIOLATIONS BUT THE COMMISSION MUST SET FORTH SPECIFIC DEBARMENT PROCEDURES IN THE HIGH COST PROGRAM

Dobson also supports the Commission's efforts to impose more stringent penalties for violation of Commission rules or precedent regarding the universal service program. As Dobson argues concerning audits, imposition of more stringent penalties must be transparent and applied in a competitively neutral manner.

The Commission should codify, as it did in the schools and libraries program, the suspension and debarment procedures and policies for the high cost program to put carriers on notice of what penalties they may face for certain violations. Specifically, Dobson would

⁴⁶ As the Commission did in the Schools and Libraries context, the Commission should provide a list of documents it suggest that carriers keep. *Schools and Libraries Fifth Report and Order*, 19 FCC Rcd at 15824-25 (stating that the list of documents was being provided for illustrative purposes only and was not meant to be comprehensive).

support a similar definition of the causes for suspension and debarment to what is applicable to those participating in the schools and libraries program. Section 54.521(c) states:

Causes for suspension and debarment are conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism.⁴⁷

Moreover, Dobson supports similar suspension and debarment procedures (*i.e.*, regarding notice of debarment proceeding, length of debarment and appeals process) to those used in the schools and libraries program.

The Commission's use of the suspension and debarment procedures, however, should be limited to specific instances of intentional fraud or clear patterns of abuse. As the Commission itself recognized in the *NPRM*, its "efforts to combat waste, fraud, and abuse must distinguish between intentional fraud and ministerial error. Our audits, penalties and application process must recognize the fundamental difference between intentional fraud and ministerial error."⁴⁸ It is important that carriers should not be unnecessarily penalized for what truly is an error. Isolated incidents regarding unintentional and/or ministerial errors should not result in extreme sanctions. The Commission should codify this principle in its rules so as to offer reassurance to carriers who support more stringent penalties that they will not be overly penalized for small errors.

⁴⁷ 47 C.F.R. § 54.521(c).

⁴⁸ *NPRM* at ¶ 74.

IV. CONCLUSION

Dobson commends the Commission for commencing this proceeding to consider the administration of the universal service support programs, and urges the Commission to make the much-needed reforms described in these comments.

Respectfully submitted,

**DOBSON CELLULAR SYSTEMS, INC. AND
AMERICAN CELLULAR CORPORATION**

By: _____/s/
Ronald L. Ripley
Senior Vice President and General Counsel
14201 Wireless Way
Oklahoma City, OK 73134
(405) 529-8376

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